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Tiffany & Company
Reissue Application No.: 10/626,376
Reissue of Patent No.: 6,363,745
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Remarks

Reconsideration and allowance in view of the comments which follow are respectfully requested.

Claims 1-23 were pending. No claims are being amended. Claims 1-23 are still now pending.

In the Office Action dated July 28, 2005, the Examiner rejected claims 1-3, 9, 11, 15 and 21 as allegedly anticipated by French Patent No. 324,092. The Examiner also rejected claims 4-8, 10-14, 16-19 and 23 as being allegedly obvious over the French Patent combined with Johnson U.S. Patent No. 5,072,549, and claims 20 and 23 as allegedly obvious over the French Patent, Johnson and U.S. Patent No. D369,758 to Remidio.

In response to the July 28, 2005 Office Action, applicant filed an Amendment on October 28, 2005. In an Advisory Action dated November 9, 2005, the Examiner ruled that the Amendment did not place the case in condition for allowance. The Examiner alleged that the French patent discloses all structural elements of the respective claims, and that because of such alleged disclosure the gemstone must be a "mixed-cut". The Examiner apparently did not give any patentable weight to the preamble term "mixed-cut" as a structural limitation based on applicant's submitted definition of mixed cut.

As described in the patent specification, there are three basic cutting styles, which are (1) step-cut, (2) brilliant-cut, and (3) hybrid or mixed-cut, the latter being a combination of the step and brilliant-cut. (See specification of subject U.S. Patent No. 6,363,745, col. 1, lines 36-49).

Applicant uses the term "mixed-cut" as described in the specification, and in the conventional manner to refer to a cutting style having both step-cut and brilliant-cut facets. The term "mixed-cut" is used to refer to a stone which does not have exclusively step cuts, or which does not have exclusively brilliant cuts, and refers to a stone having (1) all step-cut facets in the pavilion and all brilliant-cut facets in the crown, or (2) all step-cut facets in the crown and all brilliant-cut facets in the pavilion.

The French Patent No. 324,092 relates to a step-cut stone having only steps throughout its crown and pavilion. Because this French Patent has only step-cuts, and no brilliant-cuts, it is considered by those in the art as a step-cut design, and not a mixed-cut.

In further support of applicant's position on the definition of the term "mixed-cut", applicant submits as Exhibit A relevant pages of the GIA Diamond Dictionary, Third Edition, published 1993. The GIA stands for the Gemological Institute of America, a respected authority on the meanings of terms used by people working in the gemstone field. A definition is provided for "mixed-cut". Because the term "mixed-cut" is defined using the terms "step-cut" and "brilliant-cut", definitions for these latter two terms are also provided. The definition of "step-cut" is "long, narrow, four-sided facets are arranged in rows parallel with the girdle". Accordingly, in a "step-cut" the facet lines are parallel with the girdle.

All of applicant's claims recite in the preamble that the gemstone is a "mixed-cut". People of ordinary skill in the art would, therefore, know from the accepted usage of the term "mixed-cut" in the preamble that term that the gemstone referred to in the claims must be one of the two types of mixed cuts. Each of the two types of mixed-cuts has brilliant-cuts in its crown or pavilion.

One type is where the crown has step-cuts and the pavilion has brilliant-cuts, and the other is where the crown has brilliant-cuts and the pavilion has step-cuts. As one reads the remaining part of most of the claims, one would realize that the claims are directed to the first type of "mixed-cut", where the crown has step-cuts and the pavilion has brilliant-cuts. For example, in claim 1, the "crown" part of the claim says that the "crown break defined by lines parallel with the girdle", and the table is "defined by lines parallel with the girdle". As one reads the claim, he or she would understand that, because the crown has facet lines (a crown break and a table break) parallel with the girdle, the crown is a step-cut and not a pavilion-cut. Because the preamble says the stone is a mixed-cut, and the crown clearly says it has step-cuts, one would know by default that the pavilion must be a brilliant-cut. The same analysis would apply to claims 3 and 4. In claim 5, the crown is described as having steps, so one would understand that the crown is a step-cut rather than a pavilion-cut. In claim 6, the pavilion side is described as having at least three facets each having a facet intersection at a common facet intersect point. One would understand

that this is characteristic of a brilliant-cut, and not a step-cut, so one would know that the pavilion is a brilliant-cut, by default and that the crown is a step-cut.

In claim 7, the table sides are described as being substantially parallel with the girdle, so one would know that the crown is a step-cut, and that by default the pavilion is a brilliant-cut.

In claim 9, the crown is described as having steps, with a table defined by lines parallel with the girdle, so one would know that the crown is a step-cut, and that by default the pavilion is a brilliant-cut.

In claim 10, the crown is described as having steps, so one would know that the crown, instead of the pavilion, is a step-cut, and that the pavilion by default is a brilliant-cut. Claim 10 also states that the pavilion is devoid of any facet lines parallel with the girdle, confirming that the pavilion is not a step-cut.

In claim 11, the pavilion sides and corners are described as having a plurality of facets each having a facet corner intersecting at a common point, which is characteristic of a brilliant-cut. One would know that the pavilion is a brilliant-cut, and that by default the crown is a step-cut. To the same effect are claims 12, 13, 22 and 23. Claims 15, 16 and 21 recite two steps in the crown, so one would know that the crown has step-cuts and that by default the pavilion is a brilliant-cut.

All of the claims 1-3, 9, 11, 15 and 21, which have been rejected as allegedly anticipated by the French Patent, recite in the preamble that the cut is a "mixed-cut". Accordingly these claims are not anticipated by the French Patent.

In paragraph 7 of the Office Action, the Examiner stated that he disagreed with the definition of a mixed cut being defined as (1) a stone having all step-cut facets in the pavilion and all brilliant cut facets in the crown, or (2) all step-cut facets in the crown and all brilliant-cut facets in the pavilion. The Examiner stated that, because the French patent disclosed a crown according to claim 1, and a pavilion according to claim 1, one must assume that the stone is a mixed-cut

gemstone. As understood by applicant, the Examiner is defining a term in the preamble (the term “mixed cut”) by looking solely to the structural recitations after the word “comprising” in claim 1. As understood by applicant, the Examiner stated that if a structure has the features in the portion of a claim after the word “comprising” (i.e., the portion of the claim after the preamble), one can define a term in the preamble with reference to claim language after the preamble.

Applicant respectfully disagrees, in view of applicant’s understanding of how the Court of Appeals for the Federal Circuit interprets claim language in a preamble.

In Corning Glass Works v. Sumitomo Elec. USA., Inc., 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989), the court held that the determination of whether a preamble recitation is a structural limitation can be resolved only on review of the entirety of the application “to gain an understanding of what the inventors actually invented and intended to encompass by the claim.”

In Corning Glass, the claim at issue was as follows:

An optical waveguide comprising

- (a) a cladding layer formed of a material selected from the group consisting of pure fused silica and fused silica to which a dopant material on at least an elemental basis has been added, and
- (b) a core formed of fused silica to which a dopant material on at least an elemental basis has been added to a degree in excess of that of the cladding layer so that the index of refraction thereof is of a value greater than the index of refraction of said cladding layer, said core being formed of at least 85 percent by weight of fused silica and an effective amount up to 15 percent by weight of said dopant material.

A defendant in an infringement action asserted that the claim was anticipated by a prior art reference disclosing an identical structure having the features of parts (a) and (b) of the claim, but which was not being used as an “optical waveguide”, the language in the preamble.

The Federal Circuit Court stated:

To say that a preamble is a limitation if it gives “meaning to the claim” may merely state the problem rather than lead one to the answer. The effect preamble language should be given can be resolved only on review of the entirety of the patent to gain an understanding of what the inventors actually invented and intended to encompass by the claim. Here, the 915 specification makes clear that the inventors were working on the particular problem of an effective optical communication system not on general improvements in conventional optical fibers. To read the claim in light of the specification indiscriminately to cover all types of optical fibers would be divorced from reality. The invention is restricted to those fibers that work as waveguides as defined in the specification, which is not true with respect to fibers constructed with the limitations of paragraphs (a) and (b) only.

The specification of the patent at issue contained substantial disclosures of the manner of creating optical waveguides using the material described in the part (a) “core” and part (b) “cladding” parts of the claim. In order to function in the manner intended in the specification the term “optical waveguide” was construed as essential to the invention, and served to distinguish over the prior art..

Similarly, in the present case, the preamble term “mixed-cut” as understood from the commonly accepted meaning of the term, informs people of ordinary skill in the art that “mixed-cut” refers to a stone which is not exclusively a step-cut or brilliant-cut, but which is a stone which has step-cuts in one of its crown or pavilion, and brilliant-cuts in the other of its crown or pavilion.

The term “mixed cut” is a structural term, and should be given meaning to distinguish over the prior art. The MPEP §2111.02 also clearly states that structural terms (like mixed-cut) must be considered to construe the claim. The term “mixed-cut” is used in a structural way, and not a functional way or to recite a purpose or intended use. This is not a case where the preamble states a purpose or intended use “A lacrosse stick which provides improved playing

and handling characteristics". See MPEP §2111.02. For the foregoing reasons, applicant urges that claims 1-3, 9, 11, 15 and 21 should be construed to distinguish patentably over the exclusive step cut design of the French patent, and respectfully requests withdrawal of the anticipation rejection.

Claims 4-8, 10-14, 16-19 and 23 have been rejected as allegedly obvious over the French Patent in view of U.S. Patent No. 5,072,549 to Johnson. The Examiner alleged that the claimed features not disclosed by the French Patent were disclosed by Johnson, and that "It would have been an obvious design choice to a person having ordinary skill in the art to modify the French Patent's pavilion faucets to include [the claimed feature] in order to change the aesthetic appearance of the gemstone to improve its marketability and value to prospective customers."

Applicant respectfully disagrees, and respectfully traverses this rejection. In addition to the reasons stated above that the French patent is not a mixed-cut, applicant urges that it would not have been obvious to modify the French patent and combine it with the Johnson patent because their designs are considered by those skilled in the art as vastly different in structure and purpose. The French patent relates to a simple step-cut design in both the crown and pavilion, and is viewed in the art as being exclusively a step-cut stone. The Johnson patent is a brilliant-cut design in both the crown and pavilion, and is viewed in the art as being exclusively a brilliant-cut stone. Applicant urges that one of ordinary skill in the art would not be motivated to modify the exclusively step-cut design of the French patent by taking away its entire step-cut pavilion and replacing it with the entire brilliant-cut pavilion of the Johnson patent. The French patent step-cut design and the Johnson patent brilliant-cut design have different design objectives and each has acquired a different status in the art. Moreover, the French patent relates to a cut-cornered stone having four sides and four corners in the crown and pavilion, whereas the Johnson patent relates to a five sided or pentagonal stone in the crown and pavilion. In view of these differences, applicant urges that one skilled in the art would not be motivated to combine these references.

With respect to the rejection of claims 20 and 23, which have been rejected as allegedly obvious over the French patent combined with Johnson and U.S. Patent No. D 369,758 to Remidio, applicant refers to the same arguments above regarding the non obviousness of combining the

French patent with the Johnson patent.

The Remidio Patent does not overcome the deficiencies of the French patent with the Johnson patent, with respect to the propriety of combining an all step-cut cut-cornered stone (of four sides and four corners) with a five sided all brilliant-cut stone.

Further in support of applicant's positions above, applicant submits as Exhibit B the Declaration of Robert S. Greeff, the named inventor. Mr. Greeff states that the term "mixed-cut", as evidenced by the GIA Dictionary, has acquired a meaning in the gemstone field to refer to a stone having either (a) brilliant-cut crown and a step-cut pavilion, or (b) a step-cut crown and a brilliant-cut pavilion. Mr. Greeff also states that the French Patent is not a mixed-cut, and that it would not have been obvious to combine the French patent with the Johnson patent because of their different status in the art (step-cut versus brilliant-cut) and their different cross sections on the girdle (French patent is cut-cornered square and Johnson is pentagonal).

In view of the foregoing, applicant believes that the application is in condition for allowance, and such action is earnestly solicited.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicant's undersigned attorney invites the Examiner to telephone him at the number provided below.

Other than the extension fee, no additional fee is deemed necessary in Communication with the filing of this Response. However, if any fee is required, authorization is

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hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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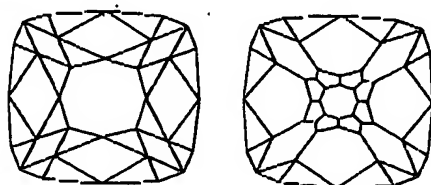
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Brazilian cut > brilliant cut

states are Minas Gerais, Mato Grosso, and Bahia, all of which have extensive alluvial deposits. Most of the mining is done by individuals or small groups.

Brazilian cut, modification of the old mine or triple cut with an additional eight facets polished around the culet. See **TRIPLE-CUT BRILLIANT**.



Brazilian cut

Brazilian diamond, misnomer for rock crystal quartz from Brazil.

break facets, see **GIRDLE FACETS**.

breaks, see **GIRDLE FACETS**.

breccia, coarse-grained rock composed of angular fragments held together by a mineral cement or a fine-grained matrix; the upper levels of kimberlite and lamproite pipes are generally filled with such material. See **DIATREME**.

Briançon diamond, misnomer for rock crystal quartz cut in Briançon, France, and originally used in chandeliers. Also called Dauphine diamond.

Bridge Oil & Gas, Australian company which operates the AREDOR Mine in Guinea. Bridge Oil's subsidiary, AREDOR Holdings, is part owner of AREDOR Guinea, the company that manages the mine.

Bridgman, Percy W. (1882-1961), American physicist who won the Nobel Prize in 1946 for his work in high pressure physics. Though Bridgman himself did not succeed in synthesizing diamond experimentally, his work contributed to General Electric Company's success in 1954. See **SYNTHETIC DIAMOND**.

briefcase, see **DIAMOND PAPER**.

Briggs' scale, ranking of the comparative toughness of brittle minerals. Position on the scale is determined by pressing fragments of different minerals against each other until one breaks; the first to break is lower in toughness. Carbonado is at the top of the scale.

Brighton diamond, misnomer for rock crystal quartz from Brighton, England.

brilliance, intensity of the internal and external reflections of white light from the crown of a polished diamond or other gemstone. Hardness, refractive index, reflectivity, polish, luster, and proportions all affect a gemstone's brilliance. See **CRITICAL ANGLE**, **DISPERSION**, **REFRACTION**, **SCINTILLATION**.

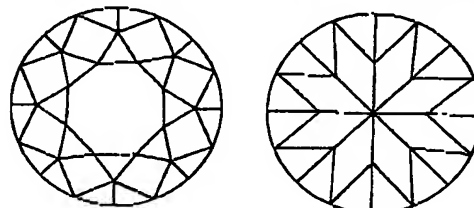
brilliandeer, person who places and polishes the remaining facets (16 halves and 8 stars on the crown; 16 halves on the pavilion) on a diamond after the bezel and pavilion main facets have been put on by the blocker or cross-worker, or both. Also spelled brillianteer. See **BLOCKER**, **BLOCKING**, **CROSS-WORKER**, **CROSS-WORKING**.

brilliandeering, act of placing and polishing the remaining facets (16 halves and 8 stars on the crown; 16 halves on the pavilion) on a diamond after the bezel and pavilion main facets have been put on. See **BLOCKING**, **CROSS-WORKING**.

brilliant, see **BRILLIANT CUT**.

Brilliant Circle, proprietary name for a diamond with a polished girdle.

brilliant cut, cut with a facet arrangement that radiates from the center of the stone towards the



crown

pavilion

brilliant cut

girdle, and triangular or kite-shaped facets. The most common brilliant cut is the standard round brilliant; modifications include the marquise, half moon, pear shape, heart shape, oval, cushion, and antique cushion brilliant cuts.

Brillante, (1) proprietary name for synthetic strontium titanate. (2) proprietary name for synthetic rutile. Both are marketed as diamond simulants.

brillianteerer, see **BRILLIANDEER**.

brilliantteering, see **BRILLIANDEERING**.

brillionette, see **HALF-BRILLIANT CUT**.

Bril-Lite, proprietary name for colorless synthetic sapphire. Marketed as a diamond simulant.

Brinell hardness test, indentation hardness test developed by Swedish metallurgist and engineer Johan A. Brinell (1849-1925). The test consists of forcing a hardened steel or carbide ball into a surface under a known load. Results are expressed in kilograms/square millimeter. See **DIRECTIONAL HARDNESS**, **HARDNESS**, **HARDNESS POINTS**, **INDENTATION TEST**, **KNOOP INDENTATION HARDNESS TEST**, **SCLEROMETER**, **SCRATCH HARDNESS**, **VICKERS HARDNESS TEST**.



photo courtesy of Harry Winston, Inc.

Briolette of India Diamond

briliolette, teardrop-shaped cut, circular in cross section and covered with triangular (or occasionally rectangular) facets.

Briolette of India Diamond, 90.38 ct. briliolette cut diamond, fashioned in 1908-1909 and sold by Cartier in 1910; sold again in 1946 to Harry Winston, who subsequently re-sold and re-purchased it several times. In 1971 it was sold to a European family. Also called the Briolette.

Bristol diamond, misnomer for rock crystal quartz from Bristol, England. Also called Bristos, Bristowes, and Bristol stones.

British Crown Jewels, large collection of gold, diamonds, and gem-set regalia (crowns, scepters, swords, etc.) owned by the British Monarchy. The collection accumulated over 500 years, beginning in the 1300s. Much of the regalia assembled by Charles I (1600-1649) was destroyed after his death, but the collection was rebuilt after the Restoration in 1660. Until the mid-twentieth century, Britain's colonies in India and South Africa provided access to the largest diamond deposits in the world, and today the British Crown Jewels include some of the world's largest and finest polished diamonds: the 530.2 ct. Cullinan I, mounted in the Cross of the Scepter; the 317.4 ct. Cullinan II, in the Imperial State Crown; and the 105.6 ct. Koh-i-Nur. The collection is on display in the Jewel House at the Tower of London.

British diamond, misnomer for quartz crystals found in limestone in Gloucester, England; sometimes used to refer to Bristol diamonds. See **BRISTOL DIAMOND**.

British Diamond Distributors, Ltd. (Britmond), affiliate of the Central Selling Organisation which purchases the MIBA production at Mbuji-Mayi, Zaire. See **MIBA MINE**.

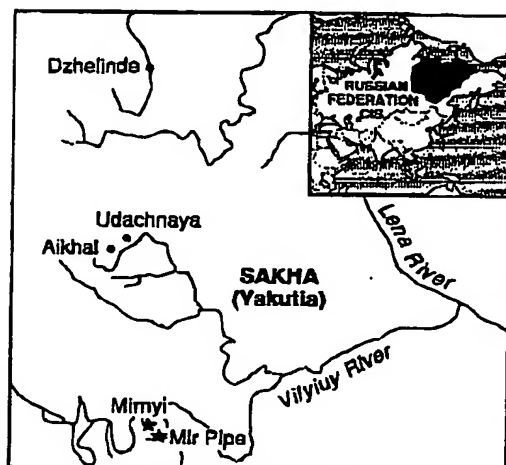
British Guiana, see **GUYANA**.

Britmond, see **BRITISH DIAMOND DISTRIBUTORS, LTD.**

brittleness, see **TOUGHNESS**.

broker, (1) independent intermediary who arranges wholesale diamond transactions between suppliers and purchasers. Brokers are usually members of bourses or diamond clubs and receive a commission on the sales they arrange. (2) one of five firms known as Diamond Trading Company or Central Selling Organisation brokers, who act for sight holders in negotiations over sights, earning a commission on each purchase. They also identify potential clients in the various diamond trading centers and bring

Mirror of Portugal Diamond > modified brilliant cut



Mirnyi and Mir Pipe

Mirror of Portugal Diamond, rectangular table-cut diamond estimated to weigh 20.30 ct.; once part of the Portuguese Crown Jewels, later owned by King James I of England (1566-1625) and then by his son, Charles I (1600-1649). Used as collateral for an unpaid loan during England's Civil War, it was forfeited, sold, and came into the possession of Cardinal Mazarin of France. When he died in 1661, he bequeathed it to the French Crown; it was later stolen in the robbery of the French Treasury in 1792. Current whereabouts unknown. See MAZARIN DIAMONDS.

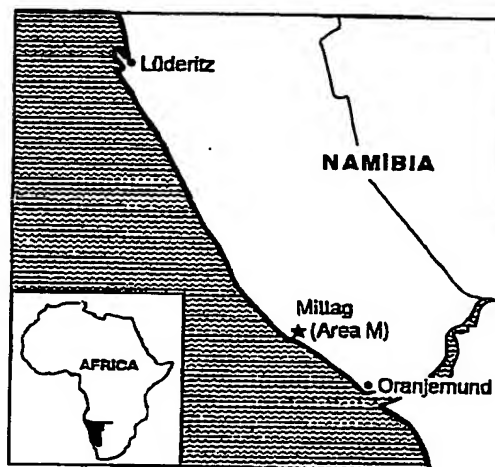
misgrading, incorrectly grading a diamond for color, clarity, or proportions, or misstating its size or weight.

misrepresentation, giving customers incorrect or incomplete information. In selling diamonds or other gems, this applies to color or clarity grades, weight, proportions, the nature of the material, and whether or not it has been treated or enhanced in any way. In most jurisdictions, misrepresentation is actionable under civil and, sometimes, criminal law, whether done through ignorance, omission, or intent to defraud.

Mitchell's Bay, see KOINGNAAS.

Mittag, historic name for one of the important alluvial mining areas along the Namibian coast

between Oranjemund and Lüderitz; also known as Area M. Operated by CDM. See AFFEN. RUCKEN, BEACH MINING, GEMSBOK, KERBEHUK, UUBVLEY.



Mittag

mixed cut, stone with a brilliant-cut crown and a step-cut pavilion, or vice versa. See BARION CUT, FLOWER CUTS, ROYAL CUTS.

Moach 1, early automatic brutting machine manufactured and marketed by Diaminir Ltd. of Israel. See DIAMINIR, LTD.

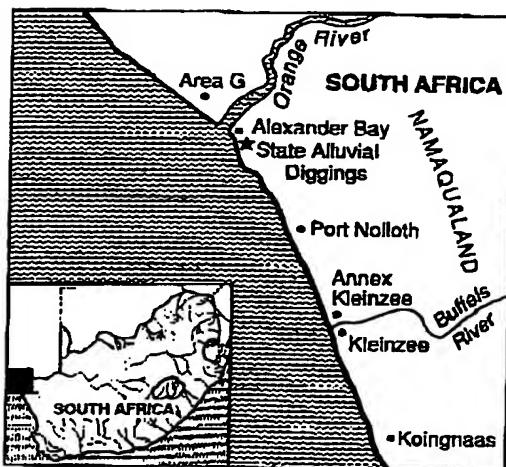
Modder River, tributary of the Vaal River, between Kimberley and Bloemfontein in South Africa, once a source of alluvial diamonds.

model, (1) the shape of a rough diamond prior to polishing. (2) three-dimensional, full-size version of the proposed final shape of a diamond. Often made of transparent material; usually done when a large diamond is about to be fashioned.

mode rose cut, hexagonal rose cut with a flat base and six facets on the crown.

modified brilliant cut, cut based on the round brilliant, but with either more or fewer facets than the standard 58 (or 57).

State Mining Company of Tanzania (STAMICO) ▶ *stewartite*



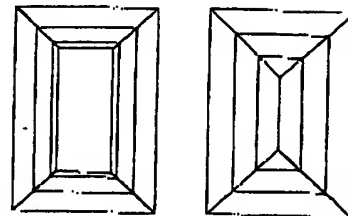
State Alluvial Diggings

State Mining Company of Tanzania (STAMICO), state-operated company formed to manage all diamond and mineral mining operations in Tanzania following nationalization in 1971. Production levels throughout Tanzania have declined steadily throughout the 1970s and 1980s, but exploration has increased; over 300 new kimberlites have been found, primarily in the eastern Tanzanian craton. See TANZANIA; WILLIAMSON DIAMONDS, LTD.; WILLIAMSON DIAMOND MINE.

static cone, separating apparatus used in diamond recovery plants, consisting of a large funnel-shaped container filled with water, crushed ore, and ferrosilicon (a finely grained, corrosion-resistant metal powder). Waste floats to the top; diamonds sink to the bottom. See HEAVY-MEDIA SEPARATION, HYDROCYCLONE SEPARATION, RECOVERY, SEPARATION (2).

St. Claude, historic diamond-manufacturing town in the Jura region of France supplying the Swiss watch industry; now of minor importance.

step cut, cutting style in which long, narrow, four-sided facets are arranged in rows parallel to the girdle on both the crown and pavilion. There are usually three rows, although this may



step cut

vary. Emerald cuts and baguettes are examples of step-cut designs.

step-cut bead, spherical bead covered with four-sided facets. Rarely used with diamonds.

step-cut briolette, cutting style closely related to the briolette, circular in cross section and entirely covered with four-sided facets except at the ends, where the facets are triangular.

Stephanie Diamond, 67.55 ct. round brilliant-cut diamond purchased by Harry Winston in 1957 and set in a clip. Now owned privately in Saudi Arabia.

Sterns Diamond, see STERNS STAR DIAMOND.

Sterns Star Diamond, 85.93 ct. fancy yellow, round brilliant-cut diamond, reportedly flawless, obtained from a 223.60 ct. octahedron found at the Dutoitspan Mine in 1972. Two other diamonds were fashioned from the rough, a 21.04 ct. emerald cut and a 6.08 ct. marquise. Purchased by Sterns, a retail jewelry company in South Africa, it has since been sold in New York.

Stewart Diamond, 296 ct. rough diamond, reportedly yellow, found at the historic Waldeck's Plant on the Vaal River, South Africa, in 1872 by two prospectors, Robert Spalding and Antonie Williams. Fashioned into a 123 ct. brilliant cut, it was named for the merchant who purchased it. Sometimes called the Star of Spalding Diamond, it is privately owned.

stewartite, rare type of bort which occurs in lumps with a cinder-like structure and dull sheen; it is magnetic, due to magnetite impuri-

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